

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

BRIDGES ACADEMY
and C. LILLETTE CAMPBELL
Respondents

Case No.: I-00-40007

FINAL ORDER

I. STATEMENT OF THE CASE AND PRIOR PROCEEDINGS

This case arises from a Notice of Infraction (00-40007), charging Respondents with violations of 29 DCMR 325.9 for admitting a child without an emergency medical form; 29 DCMR 301.1 for failure to post child development facility license; 29 DCMR 330.10 for failure to post fire drill and plan; 29 DCMR 327.1 for failure to comply with building, health and other District regulations; and 29 DCMR 325.5 for failure to have a first aid training. Respondents entered a plea of Admit with Explanation for the alleged violations of 29 DCMR §§ 301.1, 330.10 and 327.1 and a plea of Deny for alleged violations of 29 DCMR §§ 325.9 and 325.5.

An evidentiary hearing was held on March 17, 2000 for the alleged violations for which the Respondents entered a plea of Deny. Explanation was also heard for those charges to which the Respondents entered pleas of Admit with Explanation. The charging inspector, Karan Buster, appeared *pro se* for the Government in this matter and Respondent C. Lillette Campbell appeared on her own behalf and on behalf of Respondent Bridges Academy.

Prior to the hearing, the Respondents pre-filed a set of documents that were marked as Exhibit RX-1 and received into evidence. The Government presented its case through the testimony of Ms. Buster. Upon description of the alleged violation of 29 DCMR 301.1 for failing to post the child development facility license, the administrative court determined that the applicable regulation was cited inaccurately on the Notice of Infraction. The administrative court, with the consent of both parties, ordered that the Notice of Infraction be amended to reflect the proper citation of 29 DCMR 301.7 which carries with it a maximum fine of \$50.00 rather than the \$500.00 fine specified on the Notice of Infraction.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence and testimony received at the hearing, including my direct assessment of credibility of each witness, I make the following findings of fact and conclusions of law:

A. Charges Denied**1. Failure to Maintain Emergency Medical Forms (29 DCMR 325.9)**

Respondents pleaded Deny to this infraction. At the hearing, Respondents produced a copy of the one emergency medical form that was allegedly missing at the time of the inspection. The date of the document showed that it was completed prior to the date of the inspection. Moreover, the emergency medical forms for all children attending the facility were submitted by the Respondents as part of Exhibit RX-1. The inspector admitted that Exhibit RX-1 included the required form for the child she had previously noted as missing. The Government did not challenge Respondents' testimony that the appropriate form had been on file with the facility at the time of the inspection at a building across the street. I credit Respondent Campbell's testimony on this point and her testimony that the form at issue was at the facility's main office during the inspection. Although inconvenient and generally undesirable, it is not a violation of the applicable regulation to have a medical emergency form at a nearby facility.¹ I therefore conclude that the Government has failed to meet its burden to prove this charge by a preponderance of the evidence and the charge shall be dismissed.

¹ The regulation at issue requires that the facility obtain emergency medical authorization for each child admitted to the facility. By implication, these forms must also be maintained by the facility because otherwise they would be worthless. In this case, because the uncontroverted testimony demonstrated that the emergency medical form in issue was maintained in a nearby facility, the administrative court cannot find that a violation of 29 DCMR 325.9 occurred. *See Generally, Department of Health v. Symbral Foundation*, OAH Final Order, I00-40047 at 5 (May 12, 2000) (holding that a record maintenance violation could be found after the Government proved at trial that a record that was required to be maintained could not be located after more than 2 ½ hours).

2. Failure to Obtain First Aid Training (29 DCMR 325.5)

Respondents pleaded Deny to this infraction. As part of Exhibit RX-1, Respondents produced first aid certificates for all child care staff employed by the facility which reflected that the employees' certifications were current at the time of the inspection. Ms. Buster testified that the first aid certificates were not produced upon request at the time of the inspection, but she did not controvert Respondents' testimony that they were in compliance with the regulatory requirement that staff be trained in first aid. Respondents stated that the first aid documentation was kept on file in the main child development facility located near the facility in question. I credit Respondent Campbell's uncontroverted testimony on these points. The forms, admitted without objection as part of Exhibit RX-1, were acknowledged by the inspector as being appropriate to demonstrate first aid certification.² The regulation at issue does not require that first aid certificates be available immediately upon request during an inspection or even that they be available at all. The regulation requires only that "staff shall be trained in emergency first aid." 29 DCMR 325.5 The certificate is merely one way to prove that such training has occurred. *See id.* It is sufficient that the Respondents' staff were trained in first aid and that the documentation was on file in a nearby location along with other personnel and facility documentation. I therefore conclude that the Government has failed to meet its burden of proof on this charge by a preponderance of the evidence and the charge shall be dismissed.

² Authenticity was not challenged by the Government.

B. Charges Admitted with Explanation**1. Failure to Post Child Development Facility License (29 DCMR 301.1)**

Respondents pleaded Admit with Explanation to this infraction. After the Notice of Infraction was amended to cite the proper infraction by order of the administrative court and with consent of the parties,³ the Government presented testimony, through Ms. Buster, that the child development facility license was not visibly posted on the day of the inspector's visit. Respondents admitted with explanation that the license was not posted and cited the rearrangement of furniture after a recent painting project as the reason for this failure. Respondent Campbell testified that she has voluntarily established a morning check-off routine that includes checking to ensure that the license is posted and visible. Because I find an implementation of corrective measures, the acknowledgement of responsibility, and the absence of a previous offense, I conclude that a reduction is warranted in this charge. Respondents are assessed a reduced fine of \$30.00.

2. Failure to Post Fire Escape Plan (29 DCMR 330.10)

Respondents pleaded Admit with Explanation to this infraction. Citing the recent painting work in their facility as the cause for the fire drill plan having been removed from its normal location, Respondents asked for a reduction or suspension of the fine. Here too the Respondents have included the posting of the fire escape plan on their morning check-off routine. Because I find that the corrective measures to which Ms. Campbell testified are now in

³ The charge of violating 29 DCMR 301.1 carries with it a maximum fine of \$50.00 for a first-time offense and thus that amount is the maximum allowable fine to which the Respondent is subject.

place at the facility and are likely to be sufficient to prevent recurrence of this violation in the future, and because Respondents have acknowledged responsibility for their unlawful conduct, a reduction of the fine of \$500.00 to \$400.00 is appropriate.

3. Failure to Comply with Building Regulations (29 DCMR 327.1)

Respondents pleaded Admit with Explanation to this infraction. During her visit, the inspector noted the presence of a crack in the ceramic bathroom sink.⁴ Ms. Campbell testified that she had informed the church from which the child care facility rented its space of what she characterized as a “fine crack” in the bathroom sink. Respondent Campbell further stated that the church refused to replace the sink claiming that it remained functional. The inspector, without objection, testified that she believed the presence of the crack was a significant safety risk to the children who frequently pull themselves up to and lean on the sink when washing their hands. She further testified to her training and experience regarding her ability to evaluate such matters. When asked to describe the crack, Respondent Campbell drew a line she said depicted the length and width of the crack that allegedly constituted the building code violation. This depiction was accepted into evidence as Exhibit RX-2 without objection and the Government did not dispute its accuracy.

⁴ Respondents, in their pre-trial submission (Exhibit RX-1), gave explanations regarding presence of certain perishable food in the facility refrigerator as well as for the presence of a crack in the bathroom sink. The inspector, however, noted only the cracked sink in her inspection report. As such, only the issue of the sink will be addressed here.

Respondents admitted liability for the infraction⁵ and I credit the inspector's testimony with respect to the safety risk. The crack in the ceramic bathroom sink did pose some risk to the children present in the facility. Although the Respondents made good faith efforts to ask that the landlord replace the sink, it was incumbent upon them, as operators of the facility, to ensure that the facility was in a safe operating condition. Because Respondents accepted responsibility for their unlawful conduct and have previous record of compliance, a reduction in the fine from \$100.00 to \$75.00 is appropriate.

III. FINAL ORDER

Now therefore, upon the evidence and arguments presented at the trial of this matter, the findings of fact made on the record during the hearing and in this Order, and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that, with the consent of all parties, the clerical error on the Notice of Infraction listing a charge of 29 DCMR 301.1 is amended to 29 DCMR 301.7; and it is further

ORDERED, that the charged infractions and fines for violations of 29 DCMR 325.9 and 29 DCMR 325.5 are hereby **DISMISSED**; and it is further

⁵ The Government did not and could not cite which specific building or other District regulation or law was the basis for the infraction charged under 29 DCMR 327.1. In this case, the Respondents' liability for the charged infraction was not at issue because Respondents entered a plea of Admit with Explanation. Had Respondents denied liability, the absence of an applicable citation might have proved fatal to the prosecution of this charge. *E.g. Department of Health v. Multi-Therapeutic Services*, OAH Final Order, I-00-40087 at 9-11, 24-24 (June 26, 2000) (discussing the legal requirement that a Respondent receive reasonable notice of the charges and specifications against which he or she must defend).

ORDERED, that the remaining fines of \$650.00 in this matter for which the Respondents are liable are hereby reduced to \$505.00 as follows:

| Infraction | Original Fine | Final Order |
|-------------------|----------------------|-------------------------------------|
| 29 DCMR 301.7 | \$50.00 | \$30.00 |
| 29 DCMR 330.10 | \$500.00 | \$400.00 |
| 29 DCMR 327.1 | \$100.00 | \$75.00 |
| TOTAL | \$650.00 | \$505.00 ; and it is further |

ORDERED, that Respondents shall cause to be remitted a single payment totaling **FIVE HUNDRED AND FIVE DOLLARS (\$505.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

FILED **09/08/00**

Paul Klein
Chief Administrative Law Judge